

1769

DECLARATION
OF
PROTECTIVE COVENANTS
FOR
CAHABA VALLEY PARK NORTH

THIS DECLARATION, made this 29th day of November, 1989, by 119 PROPERTIES, LTD., an Alabama limited partnership, hereinafter referred to as "Declarant."

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain real property situated in Shelby County, Alabama, described as Cahaba Valley Park North, as shown on the Plan for Cahaba Valley Park North recorded in the office of the Judge of Probate of Shelby County, Alabama, in Map Book 13 at Page 140, said property being hereinafter referred to as the "Property"; and

WHEREAS, Declarant desires to subject the Property to the following covenants, conditions, and restrictions for the benefit of the Property and its present and subsequent owners;

NOW, THEREFORE, Declarant hereby declares that the Property shall be held, sold, and conveyed subject to the following covenants, conditions, and restrictions, which shall attach to and run with the Property, and shall be binding on all parties having any right, title, or interest in any lot or Parcel contained within the Property, their heirs, successors, and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE I

DEFINITIONS

1.01 Amendment. The term "Amendment" or "Amendments" shall mean and refer to any and all amendments to this Declaration as may from time to time be adopted pursuant to the terms and provisions of Article 9.07 hereof.

1.02 Association. The term "Association" shall mean and refer to Cahaba Valley Park North Association, Inc., a non-profit corporation organized or to be organized under the laws of the State of Alabama, its successors and assigns.

1.03 Board. The term "Board" shall mean and refer to the Board of Directors of the Association and their duly elected successors as may be provided in the Charter and Bylaws.

BOOK 268 PAGE 140

Cahaba Title

1.15 Structure. The term "Structure" or "Structures" shall mean and refer to the buildings to be erected on each Parcel.

ARTICLE II

MUTUALITY OF BENEFIT AND OBLIGATION

2.01 Mutuality of Benefit and Obligation. The provisions of this Declaration and any Amendments hereto are made: (a) for the mutual and reciprocal benefit of each and every Parcel and are intended to create mutual, equitable servitudes upon and in favor of each Parcel; (b) to create reciprocal rights and obligations between the respective Owners and all future and subsequent Owners of any Parcel or part thereof, and, (c) to create a privity of contract and estate between the Owners, their heirs, successors and assigns.

ARTICLE III

ASSOCIATION

3.01 Membership. Each Owner of a Parcel shall be a Member of the Association. Each Member shall at all times comply with the provisions of the Charter, the Bylaws and all rules and regulations which may from time to time be adopted by the Board. Membership in the Association shall be appurtenant to and may not be separated from ownership in any Parcel. The transfer of the fee simple title to any Parcel, other than a transfer as security for the payment of an obligation, shall include the membership rights of an Owner in the Association.

3.02 Maintenance Responsibilities of the Association. In addition to all other obligations, duties and responsibilities of the Association provided herein or as may be provided in the Charter and Bylaws, the Association shall operate, maintain, landscape and repair the medians located at the entrance of Cahaba Valley Parkway, together with the signage located in such medians and directional signage throughout Cahaba Valley Park North (hereinafter referred to as the "Common Facilities").

The Board shall be entitled to contract with any corporation, firm or other entity for the performance of any of the maintenance responsibilities provided herein.

3.03 Authority. The powers and duties of the Association shall include those set forth in Code of Alabama, this Declaration, and the Charter and Bylaws of the Association.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

4.01 Creation of the Lien and Personal Obligation of Assessments. The Developer, for each Parcel within the Property, hereby covenants, and the Owner of any Parcel by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges for the maintenance, upkeep and repair of the Common Facilities; and (2) special assessments for capital improvements, which assessments shall be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on each Parcel and shall be a continuing lien upon each Parcel for all assessments made. Each assessment, together with interest, costs, and reasonable attorney's fees, if any, shall also be the personal obligation of the person who was the Owner of the Parcel at the time when the assessment was made. The costs of operating, maintaining, landscaping and repairing the Common Facilities shall be shared proportionately by all Owners based upon the relative acreage within each Parcel as it relates to the acreage in the Property.

4.02 Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote and protect the health, safety, welfare and general upkeep of each Parcel for the benefit of the Owner of each Parcel, their respective agents, employees, guests, invitees and licensees and for the discharge of the Association's responsibilities pursuant to Article III hereof.

4.03 Special Assessments. Special assessments shall be determined upon the affirmative vote of a majority of the Board at a meeting called for that purpose. All annual and any special assessments must be made at a uniform rate for each Parcel situated on the Property.

4.04 Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to each Parcel on the conveyance of a Parcel by the Developer. The first annual assessment shall be pro-rated and adjusted according to the number of days and months remaining in the calendar year after the conveyance of a Parcel by the Owner. The Board shall determine the amount of the annual assessment against each Parcel each year in advance and written notice of such assessment shall be sent to each Owner. The due

1.04 Bylaws. The term "Bylaws" shall mean and refer to the bylaws of the Association and all amendments thereto.

1.05 Charter. The term "Charter" shall mean and refer to the Articles of Incorporation of the Association and all amendments thereto.

1.06 Committee. The term "Committee" shall mean and refer to the Architectural Control Committee provided in Article 5 hereof.

1.07 Common Facilities. The term "Common Facilities" shall mean and refer to the Common Facilities which are defined in Article 3.02 hereof.

1.08 Declaration. The term "Declaration" shall mean and refer to this Declaration of Protective Covenants for Cahaba Valley Park North, which shall be recorded in the Office of the Judge of Probate of Shelby County, Alabama, together with all Amendments thereto.

1.09 Deed. The term "Deed" shall mean and refer to any deed, mortgage, lease, assignment or other instrument conveying any interest in a Parcel, or any part thereof.

1.10 Developer. The term "Developer" shall mean and refer to 119 Properties, Ltd., an Alabama limited partnership, its successors and assigns.

1.11 Member. The term "Member" or "Members" shall mean and refer to every person or entity who holds membership in the Association.

1.12 Owner. The term "Owner" or "Owners" shall mean and refer to the record owner, whether one or more persons or entities (including the Developer), of a fee simple title to any Parcel, but excluding those having such interest merely as security for the payment of an obligation.

1.13 Parcel. The term "Parcel" shall mean and refer to any plot of land or parcel of real property within the Property.

1.14 Property. The term "Property" shall mean and refer to that certain real property situated in Shelby County, Alabama, described as Cahaba Valley Park North as shown on the plan for Cahaba Valley Park North recorded in the Office of the Judge of Probate of Shelby County, Alabama in Map Book 13, at Page 140.

BOOK 268 PAGE 143

dates shall be established by the Board and, unless otherwise provided, the Association shall collect each month from the Owner of each Parcel one-twelfth (1/12th) of the annual assessment for each Parcel. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on any Parcel have been paid and such certificates shall be conclusive evidence of the payment of any such assessment.

4.05 Effect of Nonpayment of Assessments; Remedies of the Association. All assessments shall be due on or before the first day of each month or as may be otherwise provided in the notice to each Owner from the Association. If any assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the prime rate as established by AmSouth Bank, N.A., such being the rate of interest charged to their preferred customers, the same to float and fluctuate with the prime rate, and the Association may either: after thirty (30) days prior written notice, (a) bring an action at law against the Owner personally obligated to pay the same; or (b) foreclose the lien against the property, subject to the interest of any such owner's first mortgagee, whereby all accrued interest, costs, and reasonable attorneys' fees, shall be added to the amount of such assessment. Should the said prime rate exceed the maximum interest allowed under the Alabama Usury Act or amendments or changes thereto, the interest charged shall be the same as the maximum allowed to be charged under the laws of the State of Alabama. Each such Owner, by his acceptance of a Deed to a Parcel, hereby expressly vests in the Board or their agents the right and power to bring all actions against such Owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as a mortgage or deed of trust lien on real property, and such Owner hereby expressly grants to the Association a power of sale in connection with said lien. The lien provided for in this section shall be in favor of the Association and shall be for the benefit of all other Parcel Owners. The Association, acting on behalf of the Parcel Owners shall have the power to bid at a foreclosure sale and to acquire and hold, lease, mortgage and convey the Parcel foreclosed. In the event an Owner becomes more than thirty (30) days in arrears in payment of any installment of his assessment, then the entire annual assessment may become due and payable immediately at the discretion of the Board.

BOOK 268 PAGE 144

4.06 Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Parcel shall not affect the assessment lien. However, the sale or transfer of any Parcel pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessment as to payments which become due prior to such sale or transfer.

4.07 Damage or Destruction. In the event of any damage or destruction to any Structure, the Owner does hereby covenant and agree to promptly reconstruct, replace or repair any Structure on the Parcel caused by such damage and destruction in accordance with the provisions of Article 5 hereof.

ARTICLE V

ARCHITECTURAL CONTROL COMMITTEE

5.01 Membership. Initially, the Committee shall be composed of the following three (3) individuals: Marc A. Eason, E. Victor Fortenberry and Charles H. Stephens, who shall serve until the first of the following to occur: (a) the sale of all Parcels by the Developer, or (b) five (5) years from the date of filing of this Declaration. Thereafter, the Committee shall be composed of three (3) members to be elected by a majority vote of the Members of the Association at a duly constituted meeting thereof. The Committee may designate one (1) representative to act for it. In the event of the death or resignation of any Member of the Committee, the remaining members shall have full authority to designate a successor. Neither the members of the Committee or its designated representative shall be entitled to any compensation for services performed pursuant to this covenant. The Committee shall function by majority vote and shall have the right to establish such rules and regulations concerning procedure, notice of meetings and all other matters which may come before the Committee.

5.02 Prior Approval of Plans. No Structure shall be commenced, erected, placed, moved onto or permitted to remain on any Parcel, nor shall any existing Structure upon any Parcel be altered in any way which materially changes the exterior appearance thereof, nor shall any new use be commenced on any Parcel, unless plans and specifications (including a description of any proposed new use) therefor shall have been submitted to and approved in writing by the Committee. Such plans and specifications shall be in such form and shall

contain such information as may be required by said Committee, but in any event shall include (i) a site plan of the Parcel (including proposed front, rear and side setbacks of all Structures, the location thereof with reference to Structures on adjoining portions of the Property, and the number and location of all parking spaces and driveways on the Parcel; (ii) architectural plans showing the nature, exterior color scheme, kind, shape, height and materials of all proposed Structures; (iii) a grading plan for the particular Parcel; (iv) a drainage plan and (v) a plan for landscaping. Proposed plans should be transmitted to the address as set forth below:

119 Properties, Ltd.
Attn: Mr. Marc A. Eason
119 Hillsdale Road
Birmingham, AL 35213

5.03 Basis for Disapproval of Plans. The Committee shall have the right to disapprove any plans and specifications submitted hereunder because of any of the following:

- (a) failure of any such plans or specifications to comply with any of the restrictions contained in this Declaration;
- (b) failure to include information in such plans and specifications as may have been reasonably requested;
- (c) objection to the exterior design, appearance or materials of any proposed structure;
- (d) incompatibility of any proposed Structure or use with existing Structures or uses upon other Parcels in the vicinity;
- (e) objections to the location of any proposed Structure upon any Parcel or with reference to other Parcels in the vicinity;
- (f) objection to the site plans, grading plans or drainage plan for any Parcel;
- (g) objection to the color scheme, finish, proportions, style of architecture, height, bulk, or appropriateness of any proposed Structure;

BOOK 268 PAGE 146

- (h) objection to parking areas proposed for any Parcel on the grounds of (i) incompatibility to proposed uses and Structures on such Parcels, or (ii) the insufficiency of the size of parking areas in relation to the proposed use of the Parcel;
- (i) failure of plans to take into consideration the particular topography, vegetative characteristics, and natural environment of the Parcel, or
- (j) any other matter which, in the reasonable judgment of the Committee, would render the proposed Structure, Structures, or uses inharmonious with the general plan of improvement of the Property or with Structures or uses located upon other Parcels within the vicinity.

Approval of any such plans shall terminate and be rendered void if construction is not begun within six (6) months after such approval unless six (6) month period is extended by agreement with the Committee, in which event the extended time period shall be applicable.

In any case where the Committee shall disapprove any plans and specifications submitted hereunder, or shall approve the same only as modified or upon specified conditions, such disapproval or qualified approval shall be accompanied by a statement of the grounds upon which such action was based. In any such case the Committee shall, if requested, make reasonable efforts to assist and advise the applicant in order that an acceptable proposal can be prepared and submitted for approval.

5.04 Retention of Copy of Plans. Upon approval by the Committee of any plans and specifications submitted hereunder, two (2) copies of such plans and specifications, as approved, shall be deposited for permanent record with the Committee, and a copy of such plans and specifications bearing such approval, in writing, shall be returned to the applicant submitting the same.

5.05 Rules of the Committee; Effect of Approval and Disapproval. Time for Approval. The Committee may promulgate rules governing the form and content of plans to be submitted for approval or requiring specific improvements on Parcels, including without limitation, exterior lighting and planting,

and may issue statements of policy with respect to approval or disapproval of the architectural styles or details, or other matters, which may be presented for approval. Such rules and statements of policy may be amended or revoked by the Committee at any time, and no inclusion in, omission from, or amendment of any such rule or statement shall be deemed to bind the Committee to approve or disapprove any feature or matter subject to approval, or to waive the exercise of the Committee's discretion as to any such matter, but no change of policy shall affect the finality of any approval granted prior to such change. Approval for use on any Parcel of any plans or specifications shall not be deemed a waiver of the Committee's rights, in its discretion, to disapprove such plans or specifications or any of the features or elements included therein if such plans, specifications, features or elements are subsequently submitted for use on any other Parcel or Parcels. Approval of any such plans and specifications relating to any Parcel, however, shall be final as to that Parcel and such approval may not be revoked or rescinded thereafter, provided, (i) that the Structures or uses shown or described on or in such plans and specifications do not violate any specific prohibition contained in the restrictions contained in this Declaration and (ii) that the plans and specifications, as approved, and any condition attached to any such approval, have been adhered to and complied with in regard to all structures on and uses of the Parcel in question.

In the event the Committee fails to approve or disapprove any plans and specifications as herein provided within thirty (30) days after submission thereof, the same shall have been deemed to have been approved, as submitted, and no further action shall be required; provided, however, that the applicant shall have evidence of receipt of the required application package by the Committee.

5.06 Failure to Obtain Approval. If any Structure shall be altered, erected, placed or maintained upon any Parcel, or any new use commenced upon any Parcel, otherwise than in accordance with plans and specifications approved by the Committee pursuant to the provisions of this Article 5, such alteration, erection, maintenance or use shall be deemed to have been undertaken in violation of this Article 5, and without the approval required herein, and, upon written notice from the Committee, any such structure so altered, erected, placed, or maintained upon any Parcel in violation shall be removed or realtered, and any such use shall be terminated, so as to extinguish such violation.

BOOK 268 PAGE 149

If fifteen days (15) after the notice of such violation the Owner of the Parcel upon which such violation exists shall not have taken reasonable steps toward the removal or termination of the same, the Association, on behalf of the other Owners of each Parcel, shall have the right, through its agents and employees, to enter upon such Parcel and to take such steps as may be necessary to extinguish such violation and the cost thereof shall be a binding, personal obligation of such Owner as well as a lien (enforceable in the same manner as a mortgage) upon the Parcel in question. The lien provided in this Article 5.06 shall not be valid as against a bona fide purchaser (or a bona fide mortgagee) of the Parcel in question unless a suit to enforce said lien shall have been filed in a court of record in Shelby County, Alabama, prior to the recordation of the deed (or mortgage) in the Office of the Judge of Probate of Shelby County, Alabama, conveying the Parcel in question to such purchaser (or subjecting the same to such mortgage).

5.07 Inspection Rights. Any agent of the Committee may at any reasonable time or times enter upon and inspect any Parcel and any improvements thereon for the purpose of ascertaining whether the maintenance of such Parcel and the maintenance, construction, or alteration of Structures thereon are in compliance with the provisions hereof; and the Committee nor any such agent of the same shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

5.08 Waiver of Liability. The Committee, or any architect or agent of the foregoing, shall not be responsible in any way for any failure of any Structures to comply with requirements of this Declaration, any defects in any plans and specifications submitted, revised or approved in accordance with the foregoing provisions, nor for any structural or other defects in any work done according to such plans and specifications.

ARTICLE VI

GENERAL COVENANTS AND RESTRICTIONS

6.01 Without the Prior Written Approval of the Committee:

- (a) No previously approved Structure shall be used for any purpose other than that for which it was originally designed;

- (b) no Parcel shall be split, divided or subdivided for sale, resale, gift, transfer, or otherwise;
- (c) to the extent of the interest of the Owner of a Parcel, no facilities, including poles and wires, for the transmission of electricity, telephone messages and the like shall be placed or maintained above the surface of the ground on any Parcel and no external or outside antennas of any kind shall be maintained except on the rear portion of the Parcel; and
- (d) no boat, boat trailer, house trailer, trailer, motor home or any similar items shall be stored in the open on any Parcel for a period of time in excess of twenty-four (24) hours.

6.02 Animals. No birds, livestock, animals, or insects shall be kept or maintained on any Parcel without the express written consent of the Committee.

6.03 Signage Regulations. The signage regulations for the Cahaba Valley Park North shall be as follows:

- (a) generally, single and multi tenant building developments within Cahaba Valley Park North shall be allowed only one (1) free-standing ground sign or one (1) building sign to the fronting street. Multi rent buildings which are designed to provide individual exterior entry to the tenants will be allowed to incorporate tenant identification signage on the exterior of each tenant's space and said signage shall not exceed 12 square feet per tenant sign.
- (b) all free standing signs must be within the property line and extend no higher than 6 feet above the ground.
- (c) no building sign may extend above the face of the building nor project more than 18 inches from the wall.
- (d) signs may be illuminated by non-flashing direct or indirect illumination and shall not contain moving parts.

(e) the permitted sign face area shall be approved on an individual basis by the Committee and will be based on the following criteria:

1. Size (acres of the subject parcel)
2. Size (height and scale of the building)
3. The relationship of the subject sign to adjacent developments.

(f) temporary signs shall be subject to the prior written approval of the Committee.

(g) all signs shall be subject to review and approval of the Committee.

6.04 Temporary Structures. No temporary building, trailer, garage or building in the course of construction or other structure shall be used, temporarily, or permanently as a residence on any Parcel.

6.05 Accumulation of Refuse. No lumber, metals, or bulk materials shall be kept, stored or allowed to accumulate on any Parcel, except building materials during the course of construction of any approved Structure. No refuse or trash shall be kept, stored or allowed to accumulate, except between scheduled pick-ups and in accordance with the following:

Each planned development shall have (at the discretion of the Committee) a service yard adequate for the handling of waste and garbage. Such service yard shall be paved and shall be enclosed by a screening structure not less than 6 feet tall and adequate to conceal from view any waste materials and storage equipment.

6.06 Pipes. To the extent of the interest of the Owner of a Parcel, no water pipe, gas pipe, sewer pipe, or drainage pipe shall be installed or maintained above the surface of the ground on any Parcel, except hoses and movable pipes used for irrigation purposes.

6.07 Mining. To the extent of the interest of the Owner of a Parcel, and except for construction approved under Article 5 hereof, no Parcel shall be used for the purpose of boring, mining, quarrying, exploring for or removing oil or other hydrocarbons, minerals, gravel or earth.

6.08 Underground Utilities. To the extent of the interest of the Owner of a Parcel, the Owner of a Parcel will not without the prior written consent of the Committee, erect or grant to any person, firm, or corporation the right, license or privilege to erect or use or permit the use or erection of overhead wires, poles, or overhead facilities of any kind for electrical or telephone service on said real estate (except such poles and overhead facilities as may be required at those places where distribution facilities enter and leave the particular area). Nothing herein shall be construed to prohibit overhead street lighting or ornamental yard lighting, where serviced by underground wires or cables.

6.09 Connection Points for Utility Service Lines. To the extent of the interest of the Owner of each Parcel, such Owners agree to connect utility service lines (including, but not limited to, gas, water, sewer and electricity) at points designated by the Committee.

ARTICLE VII

ZONING AND SPECIFIC RESTRICTIONS

7.01 Zoning Laws. The Restrictions set forth in this Declaration shall not be taken as permitting any action or thing prohibited by the applicable zoning laws, or the laws, rules or regulations of any governmental authority, or by specific restrictions imposed by any deed or lease. In the event of any conflict, the most restrictive provision of such laws, rules, regulations, deeds, leases or the Restrictions shall be taken to govern and control.

7.02 Building Codes. All buildings shall comply with requirements of the Standard Building Code, the City of Pelham Building Inspection Department and the Shelby County Health Department.

7.03 Setbacks. No structure shall be located on any Parcel nearer to the front line or nearer to the side street line than the minimum building setback lines as required in the City of Pelham's Zoning Regulations for the subject zoning classification. In addition, no building shall be located on any Parcel nearer than 35 feet to the front line, side and interior parcel line or the rear Parcel line. For the purpose of this covenant, eaves, steps, and open porches shall not be construed to permit any portion of a building on a Parcel to encroach upon another Parcel. Paved areas may only extend to within 12 feet of any property line. The Committee shall have the authority to grant variances from the above established setback requirements.

7.04 Parking. Each Parcel Owner shall provide adequate off street parking to accommodate all existing and future needs for employees, visitors and company vehicles. Parking spaces shall meet the City of Pelham's off street parking requirements. Each space shall be a minimum of nine (9) feet wide unless designated as handicapped parking. Areas designated for automobile use shall not be used for trucks, commercial vehicles and/or material storage. No parking will be permitted in open fields or vacant lots. Inoperative or junk vehicles will be towed away at Owner's expense.

7.05 Off Street Loading. Truck and trailer maneuvering areas shall be entirely off street and no backing shall be allowed into or from the public street. Truck maneuvering areas shall be one-hundred twenty-five (125) feet in depth and truck berths a minimum of twelve (12) feet wide. No loading areas shall be permitted on the front of any building or on any side facing a public street. Additional screening and/or beautification may be required by the Committee adjacent to any loading facility.

7.06 Landscaping. Landscaping treatment shall be required on all Parcels. Every Parcel on which a building shall have been placed shall be maintained to keep the Parcel in a well kept condition. A minimum of twenty percent (20%) of each Parcel shall be landscaped for green treatment in a balanced mixture of grass lawns, ground cover, shade trees, plantings, evergreen hedge and flowers. General landscaping shall also include the use of walls, screening terraces and berms. Landscaping can be used to mark entrance points, parking areas, define service areas and property divisions as well as to enhance building scale and forms. Landscaping or Beautification Plans must be approved by the Committee.

Landscape treatment should not interfere with the line of sight or block needed views of buildings or their means of identification from the public street providing access thereto.

Each Parcel Owner will be responsible for the implementation and maintenance of landscaping within the normal right-of-way line of adjacent public streets. Landscaping materials shall generally consist of sod as prescribed by the Committee.

ARTICLE VIII

EASEMENTS

8.01 Drainage. Except with prior written permission from the Committee, drainage flow shall not be obstructed nor be diverted from drainage swales, storm sewers and/or utility easements as designated herein, or as may hereafter appear on any plat of record of Cahaba Valley Park North. The Developer may cut drainways for surface water wherever and whenever such action may appear to Developer to be necessary in order to maintain reasonable standards of health, safety and appearance; provided, however, that the Developer's right to cut drainways shall terminate when the principle structure and approved landscaping on conveyed property shall have been completed. These easements and rights expressly include the right to cut any trees, bushes or shrubbery, make any gradings of soil, or to take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health and appearance. The provisions hereof shall not be construed to impose any obligation upon the Developer to cut such drainways.

8.02 Grading. The Developer may at any time make such cuts and fills upon any Parcel or other part of Cahaba Valley Park North and to drain surface waters therefrom; and may assign such rights to Shelby County, Alabama or the City of Pelham, Alabama, or to any municipal or public authority; provided, however, that after plans for the principal Structure upon a Parcel shall have been approved by the Committee as provided herein. The rights of the Developer under this Article 8 shall terminate with respect to all parts of such Parcel other than the easement area thereof, except that the Committee or any municipal or public authority having jurisdiction shall thereafter have the right to maintain existing streets and drainage structures.

ARTICLE IX

GENERAL

9.01 Grantee's Acceptance. The grantee of any Parcel subject to the coverage of this Declaration, by acceptance of the deed or other instrument conveying an interest in or title to, or the execution of a contract for the purchase thereof, whether from the Developer or a subsequent Owner of such Parcel, shall accept such deed or other contract upon and subject to each and all of the provisions of this Declaration herein contained.

9.02 Indemnity for Damages. Each Parcel Owner and/or future Parcel Owner, in accepting a deed or contract for any Parcel subject to this Declaration, agrees to indemnify the Developer, the Association and the Committee for any damage caused by such Owner, or the contractor, agent, or employees of such Owner, to roads, streets, gutters, walkways or other aspects of public ways, including all surfacing thereon, or to water, drainage or storm sewer lines or sanitary sewer lines owned by the Developer, or for which the Developer or the Association has responsibility, at the time of such damage.

9.03 Severability. Every one of the provisions and restrictions contained in this Declaration is hereby declared to be independent of, and severable from, the rest of the provisions and restrictions and of and from every combination of the provisions and restrictions in this Declaration. Invalidation by any court of any provision or restriction in this Declaration shall in no way affect any of the other provisions or restrictions, which shall remain in full force and effect.

9.04 Right of Developer to Modify Restrictions With Respect to Unsold Parcels. With respect to any unsold Parcel, Developer may include in any contract or deed hereinafter made or entered into such modifications and/or additions to this Declaration as the Developer, in its discretion desires.

9.05 Effect of Violation on Mortgage Lien. No violation of any of the provisions of this Declaration shall defeat or render invalid the lien of any mortgage made in good faith and for value upon any portion of the Property provided, however, that any mortgage in actual possession, or any purchaser at any mortgagee's or foreclosure sale shall be bound by and subject to the provisions of this Declaration as fully as any other Owner of any portion of the Property.

9.06 No Reverter. No restriction herein is intended to be, or shall be construed as, a condition subsequent or as creating a possibility of reverter.

9.07 Duration and Amendment. These covenants and restrictions shall run with the land and may be changed, modified, amended, altered or terminated only in accordance with the provisions hereof. These covenants and restrictions may be changed, modified, amended, altered or terminated at any time within a period of fifteen (15) years from the date of these covenants and restrictions are recorded by a duly recorded written instrument executed by the then record owners

(including mortgagees and other lien holders of record, if any) of ninety percent (90%) of the number of Parcels of Cahaba Valley Park North. After fifteen (15) years from the date these covenants and restrictions are recorded, the same may be changed, modified, amended, altered or terminated by a duly recorded written instrument executed by the then record owners (including mortgagees and other lien holders of record, if any) of seventy-five percent (75%) of the number of Parcels of Cahaba Valley Park North. After twenty (20) years from the date these covenants and restrictions are recorded, the same may be changed, modified, amended, altered or terminated by a duly recorded written instrument executed by the then record owners (including mortgagees and other lien holders of record, if any) of sixty-five percent (65%) of the number of the Parcels of Cahaba Valley Park North.

9.08 Enforcement. In the event of a violation or breach of any of the provisions of this Declaration or any Amendments hereto, by any Parcel Owner, or employee, agent, or lessee of such Owner, the Owner(s) of Parcel(s), the Association, their successors and assigns, or any business party to whose benefit these covenants and restrictions inure shall have the right to proceed at law or in equity to compel compliance with the terms and conditions hereof, to prevent the violation or breach of said covenants and restrictions, to sue for and recover damages or other dues or to take all such courses of action at the same time, or such other legal remedy it may deem appropriate. No delay or failure on the part of any aggrieved party to initiate an available remedy set forth herein shall be held to be a waiver of that party or an estoppel of that party or of any other party to assert any right available to him upon the recurrence of continuation of said violation or the occurrence of a different violation.

Damages shall not be deemed adequate compensation for any breach or violation of any provision hereof, but any person or entity entitled to enforce any provision hereof shall be entitled specifically to relief by way of injunction as well as any other available relief at law or in equity.

Any party to a proceeding who succeeds in enforcing the provisions hereof, or enjoining the violation of any provision of this Declaration against a Parcel Owner, may be awarded a reasonable attorney's fee against such Parcel Owner.

9.09 No Waiver. The failure of any party entitled to enforce any provision of this Declaration shall in no event be considered a waiver of the right to do so thereafter, as to the

same violation or breach or as to such a violation or breach occurring prior or subsequent thereto; provided, however, that approval of plans pursuant to Article 5 shall be binding on any and all parties as a conclusive determination that such plans are in conformity with the requirements of this Declaration.

IN WITNESS WHEREOF, 119 Properties, Ltd., an Alabama limited partnership, has caused this Declaration of Protective Covenants for Cahaba Valley Park North to be properly executed by its duly authorized general partner as of the 29th day of November, 1989.

119 PROPERTIES, LTD., an Alabama limited partnership

By: Its general partner, CAHABA VALLEY PROPERTIES, INC.

By: Charles H. Stephens
CHARLES H. STEPHENS
Its: President

STATE OF ALABAMA)

Jefferson COUNTY)

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that CHARLES H. STEPHENS, whose name as President of Cahaba Valley Properties, Inc., general partner of 119 Properties, Ltd., an Alabama limited partnership, is signed to the foregoing and who is known to me, acknowledged before me on this day that, being informed of the contents of the same, he, in his capacity as such officer and with full authority, executed the same voluntarily for and as the act of said corporation in its capacity as general partner of 119 Properties, Ltd., an Alabama limited partnership, on the day the same bears date.

Given under my hand this the 29th day of November, 1989.

Cynthia D. Rice
Notary Public
My Commission Expires: 12/91

KENNETH F. PRITCHARD, as the holder of a mortgage encumbering a portion of Cahaba Valley Park North, hereby consents to the foregoing Declaration of Protective Covenants for Cahaba Valley Park North.

Kenneth F. Pritchard
KENNETH F. PRITCHARD

STATE OF ~~ALABAMA~~ ^{MISSISSIPPI})

Madison COUNTY)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that KENNETH F. PRITCHARD, whose name is signed to the foregoing Declaration of Protective Covenants for Cahaba Valley Park North, and who is known to me, acknowledged before me on this day that, being informed of the contents of the Declaration, he executed the same voluntarily on the day the same bears date.

Given under my hand this 14th day of November, 1989.

Joni Bennett Alford
Notary Public

My Commission Expires: My Commission Expires June 25, 1990

AmSOUTH BANK N.A., a national banking association, as the holder of a mortgage encumbering a portion of Cahaba Valley Park North, hereby consents to the foregoing Declaration of Protective Covenants for Cahaba Valley Park North.

AmSOUTH BANK N.A.
a national banking association

By: Arthur J. Sharbel, III
Its: Real Estate Loan Officer

STATE OF ALABAMA)

JEFFERSON COUNTY)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Arthur J. Sharbel, III, whose name as Real Estate Loan Officer of AmSouth Bank N.A., a

national banking association, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said banking association.

Given under my hand and official seal this the 21st day of November, 1989.

Lay L. Bains
Notary Public
My Commission Expires: 10/16/92

5214Q

1. Deed Tax	\$	
2. Notary Fee		
3. Recording Fee		\$0.00
4. Ad Valorem Tax		3.00
5. Transfer Tax		
6. Other Fees		1.00
Total	\$	\$4.00

STATE OF ALA. SHELBY CO.
I CERTIFY THIS
INSTRUMENT WAS FILED

89 NOV 30 AM 9:26

Thomas A. Snowling, Jr.
JUDGE OF PROBATE

BOOK 268 PAGE 159

